



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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In the Matter of the Application of California-  
American Water Company (U 210 W) for  
Approval of the Monterey Peninsula Water  
Supply Project and Authorization to Recover  
All Present and Future Costs in Rates.

A.12-04-019  
(Filed April 23, 2012)

**MARINA COAST WATER DISTRICT'S  
PHASE 2 (GWR) OPENING BRIEF**

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Marina Coast Water District (“MCWD”) respectfully submits its Opening Brief on Phase 2, the Groundwater Replenishment (“GWR”) Project phase, of the instant application of California-American Water Company (“Cal-Am”), wherein Cal-Am seeks prompt Commission approval of its entry into a Water Purchase Agreement (“WPA”) with the public agency proponents of the GWR Project, also known as Pure Water Monterey – *i.e.*, the Monterey Regional Water Pollution Control Agency (“MRWPCA”) and the Monterey Peninsula Water Management District (“MPWMD”).

MCWD strongly supports the GWR Project. The request by Cal-Am and multiple parties to A.12-04-019 for a prompt and separate decision approving Cal-Am’s entry into the WPA properly treats the GWR Project as a “stand-alone” project and in no way seeks to support or secure prejudgment by the Commission of the need for and appropriateness of approval of the desalination project phase of A.12-04-019 (Phase 1).

## **I. INTRODUCTION**

MCWD is a County Water District that was formed by a citizens’ group in 1958, organized and operating under section 3000 of the California Water Code and serving residents, businesses and organizations throughout Marina and the Ord Community.<sup>1</sup> (See Ex. MCD-1A, pp. 3:23-5:27.) MCWD is the sole provider of municipal water service, relying exclusively on groundwater wells, for over 33,000 residents in the Marina/Ord community; Marina Coast’s service area overlies the 180/400 Foot sub-basin

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<sup>1</sup> MCWD supplies water to over 8,250 connections, and it maintains and operates 105 miles of pipeline, 8 reservoirs, 5 booster pump stations and 8 wells. It is also responsible for maintaining its service area’s sewer system, which includes 20 lift stations and 110 miles of pipeline.

of the Salinas Valley Groundwater Basin as well as the northern, non-adjudicated portion of the Seaside sub-basin, proposed to be denominated the “Salinas Valley Marina Area” by the Department of Water Resources pursuant to the recent basin boundary modification request of MPWMD. (See Ex. MCD-16, pp. 2:21-4:19, Reporter’s Transcript (“RT”) Vol. 17, pp. 2937:14-2938:7; *see also* attachment to application available at <http://sgma.water.ca.gov/basinmod/basinrequest/preview/24>, § D.2, *click on* “Figure 1 Map Appli.pdf.”) MCWD’s service area is north of, and immediately adjacent to, Cal-Am’s service area. Source wells for Cal-Am’s proposed desalination project would be constructed outside Cal-Am’s service area, within less than 2 miles of MCWD’s groundwater sources. (RT Vol. 17, pp. 2833:4-16, 2834:14-2835:6; 2850:10-2851:4.) MRWPCA and MPWMD facilities for the GWR Project would be developed adjacent to and within MCWD’s service area. (RT Vol. 19, pp. 3149:3-3151:7)

MCWD supports the Commission’s prompt approval of the GWR WPA. (Ex. MCD-16, pp. 8:14-9:19.) MCWD also supports prompt approval of Cal-Am’s construction of the Monterey Pump Station and the Monterey Pipeline (the “Pump and Pipeline”). The Pump and Pipeline will permit Cal-Am to take full advantage of legally available excess winter flow from the Carmel River under the Aquifer Storage and Recovery (“ASR”) program, and they will maximize Cal-Am’s ability to deliver GWR product water and ASR water supply, upon extraction from the Seaside Basin, to ratepayers in its Monterey Peninsula service district. (Exs. JE-4; JE-2, pp. 10:8-11:2; RT Vol. 19, pp. 3148:18-3149:1, 3160:6-20; *see also* JE-5, 6, 7, 8.)

Taken together, new supplies of water from GWR and ASR should enable Cal-Am to achieve substantial, if not total, compliance with the requirement of eliminating Cal-Am's illegal diversion of Carmel River water elucidated in the State Water Resources Control Board's ("SWRCB's") Order WR 95-10 and Order WR 2009-0060 (the "CDO") by early 2018.

## **II. PROCEDURAL HISTORY**

Twenty years ago, the SWRCB determined that decades of unlawful pumping to supply water to Cal-Am's Monterey Peninsula district had resulted in longstanding and significant degradation of the Carmel River environment including endangered steelhead habitat, and the SWRCB ordered Cal-Am to eliminate over two-thirds of its Carmel River withdrawals. (SWRCB Order WR 95-10, pp. 38-45.) Then, some eighteen years ago, the California Legislature directed the Commission to find a solution to the resulting shortage of legal and environmentally acceptable water supply. (Assembly Bill ("A.B.") 1182 (1998 stats., ch. 797).) From 1998 forward, the Commission has overseen multiple complex and challenging proceedings, involving a large number of diverse stakeholders, in attempting to solve the problem. (*E.g.*, A.04-09-019, A.09-04-015, A.10-09-018, A.12-04-019; *see* D.10-12-016, pp. 18-30 and D.12-07-008, pp. 2-5, including sources there cited.) In 2009, the SWRCB issued the CDO, establishing a firm December 31, 2016 deadline for full implementation of the required replacement water supply. (SWRCB Order WR 2009-0060, pp. 57-58.)

Nearly six years ago, the Commission approved a Regional Desalination Project ("RDP") to solve the Monterey Peninsula water supply crisis, a public-private project that

was to be carried out together by Cal-Am, MCWD and the Monterey County Water Resources Agency (“MCWRA”). (D.10-12-016, pp. 202-206.) But four years ago, the Commission permitted Cal-Am to withdraw from the RDP (D.12-07-008, pp. 1, 25-26) and to proceed instead with the instant Application for a different desalination project, a Cal-Am-only project similar to the North Marina alternative that was considered and rejected in D.10-12-016 (Application, p. 5), though potentially of a smaller size and in combination with the implementation of GWR by MRWPCA. (*Id.* at 5-6.)

Evidentiary hearings were held in April and May of 2013. In July of 2013, Cal-Am and a number of parties entered a settlement agreement in support of the proposed Cal-Am-only desalination project. (July 31, 2013 Motion to Approve Settlement Agreement; Att. A thereto.) However, the support of Citizens for Public Water, LandWatch, the Monterey County Farm Bureau, MCWRA, and the Salinas Valley Water Coalition for that settlement was conditioned upon the conduct of certain hydrogeologic research and the development of further information concerning the groundwater sub-basins and aquifers that could be adversely affected by subsurface pumping of brackish groundwater to supply the proposed desalination plant. (Ex. CA-44, p. 4 at § 3.1.)

Thereafter, in separate proceedings before the City of Marina and the California Coastal Commission, Cal-Am obtained approval for and implemented a test slant well program in relation to its proposed desalination project. (Ex. MCD-16, pp. 3:12-26, 7:13-8:12.) MCWD’s challenges concerning the test slant well remain pending before the courts. (*Ibid.*; MCD-18, p. 2:2-5.) MCWD continues to oppose Cal-Am’s withdrawal of

groundwater without legal right from a critically-overdrafted sub-basin of the Salinas Valley Groundwater Basin at a location and in a manner that harms the basin, MCWD and other lawful users of the basin, whether for the slant test well or for the source wells for the desalination project proposed in this proceeding. (RT Vol. 17, pp. 2850:10-2851:4; Ex. MCD-21, pp. 5:1-6:25; *see* MCWD’s April 8, 2016 Protest of Amended Application 12-04-019, pp. 1-3.)<sup>2</sup>

Since the February 14, 2014 close of briefing on the July 2013 settlement, a number of important developments have occurred. First, the Legislature enacted the landmark Sustainable Groundwater Management Act (or “SGMA,” Water Code §§ 10720-10736.6), effective January 1, 2015. The SGMA vests the protection of groundwater resources in local authority, by requiring basin and sub-basin management plans to be implemented by local “groundwater sustainability agencies.” (Water Code § 10721.) A purpose of the SGMA was to clearly vest primary authority, control and protection of local groundwater resources in the local agencies most affected by and reliant on those resources. (*Ibid.*)

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<sup>2</sup> MCWD also reserves its additional asserted grounds for protest concerning Cal-Am’s proposed desalination project, including: lack of a groundwater right; violation of Monterey County Code of Ordinances, chapter 10, section 10.72.030, subd. B (requirement for public ownership of desalination facilities); violation of the anti-export and no-harm provisions of the Agency Act, (Water Code Appendix, ch. 52); violation of the 500 acre-foot per year pumping restriction at the CEMEX property (*see* Ex. MCD-6, 1996 Annexation Agreement), the conflict of interest in connection with the Commission’s CEQA review and the adequacy of that review, and the Commission’s failure to accord MCWD and all Parties to A.12-04-019 an evidentiary hearing on the environmental impacts of the desalination project as required by case law and the Public Utilities Code.



Second, a greater quantity of technical data has been developed concerning the Salinas Valley Groundwater Basin as a whole, as well as the sub-basin, sub-area and aquifers in the North Marina area that are most relevant to the location of source water wells for the proposed desalination project. Some of the new data was included in the Commission's April 2015 draft environmental impact report ("DEIR") and some was omitted, as MCWD noted in written comments. (*See* MCWD's July 29, 2015 Comments in Response to July 9, 2015 Notice to All Parties (re DEIR), pp. 10-16 (revision and recirculation required due to failure to include test well data in DEIR groundwater analysis, among other reasons).) The collection of data through Cal-Am's test slant well program remains underway. (RT Vol. 15, p. 2470:8-27; Vol. 18, pp. 3090:17-3092:2; *see* at <http://www.watersupplyproject.org/#!/test-well/c1f11> (test slant well reporting).)

Third, after the Commission released its April 2015 DEIR, the Commission's environmental staff issued a notice indicating that a key Commission hydrogeology sub-consultant who had led the Commission's study of hydrogeologic impacts of the project discussed in the DEIR had a serious financial conflict of interest and announced that the sub-consultant would no longer be considered a Commission consultant but would henceforth be considered a Cal-Am consultant. (Energy Division July 9, 2015 Notice to All Parties, pp. 1, 2 (Geoscience "will not do any more work for the Commission on this project," work of Geoscience considered by the Commission "as if it had been performed by the proponent, Cal-Am.").) The Commission also determined that the currently-proposed desalination project should be subject to joint state and federal environmental review and that the released DEIR would be withdrawn and revised jointly with the

Monterey Bay National Marine Sanctuary as a new joint federal-state DEIR/DEIS. (Sept. 30, 2015 Notice to All Parties.) The earliest anticipated date for release of the revised DEIR/DEIS is now December, 2016, with a final decision on Cal-Am's request for a Certificate of Public Convenience and Necessity ("CPCN") for its proposed desalination project now set to occur sometime in 2017 or 2018. (*See* March 17, 2016 email notice.)

Fourth, pursuant to Administrative Law Judge ("ALJ") Rulings in this proceeding, Cal-Am updated its supply and demand data, making that data available to the parties beginning in January of this year. (Nov. 17, 2015 ALJ Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2, pp. 5, 13; Ex. CA-41, pp. 7-8.) Ongoing system demand updates are being provided online. (Nov. 17, 2015 ALJ Ruling, p. 13; *see* monthly reporting *available at* <http://www.watersupplyproject.org/#!/system-delivery/pjew.s>.)

Perhaps most relevant to the issue presently before the Commission, over the past two years MRWPCA has proceeded with environmental review and approval of the GWR Project. (Ex. PCA-1, pp. 7:15-8:14; *see* GWR Project, Final EIR, *available at* <http://purewatermonterey.org/reports-docs/cfeir/>.) This review included consideration of the environmental impacts of Cal-Am constructing the Monterey Pipeline. (RT Vol. 19, p. 3237:5-16; Ex. JE-2, pp. 11:21-13:6.) Although the Monterey Pump Station was not covered at the same time, MPWMD has indicated that it intends to promptly prepare an addendum to its previously-approved EIR/Environmental Assessment for the ASR project that will review the potential impacts of the Monterey Pump Station, and that its and MRWPCA's consideration of that addendum is imminent. (*Id.* at pp. 12:16-13:6.)

In light of the progress made by MRWPCA on its GWR Project, pursuant to the November 17, 2015 ALJ Ruling, the parties served supplemental testimony that included testimony concerning GWR in January and March of 2016. The Commission held additional evidentiary hearings from April 10-14, 2016, after which a number of parties jointly moved for an early Phase 2 decision on GWR as a “stand-alone” project. (April 18, 2016 Joint Motion for a Separate Phase 2 Decision, p. 4.) Further supplemental testimony solely concerning GWR was served on May 9 and 19, 2016, and a final day of evidentiary hearings on GWR, or Phase 2, was held on May 26, 2016. A briefing schedule was set at conclusion of that day’s hearing, in accordance with the early Phase 2 decision date of August 2016. (RT Vol. 19, p. 3324:3-11.)

### **III. ARGUMENT**

#### **A. The Need for Water Supply on the Monterey Peninsula**

No party contests the need for Cal-Am to comply as promptly as possible with the orders of the SWRCB, including the CDO. However, Cal-Am’s ratepayers should not be punished for Cal-Am’s past failures to achieve compliance. In this regard, several parties have joined Cal-Am in seeking a five-year extension of the CDO, with modifications, from the SWRCB. (Ex. PCL-8, Amended Application pp. 1-2.) The Commission itself expressed support for Cal-Am’s amended application to the SWRCB. (Ex. PCL-7, pp. 1, 4.) While MCWD agrees that it is inappropriate for ratepayers and the larger community – including the many MCWD residential ratepayers who are employed within Cal-Am’s Monterey Peninsula service area – to suffer on account of Cal-Am’s shortsightedness, it does not agree that an extension of more than two or three years past the current deadline

of December 31, 2016 should be necessary. In any event, SWRCB Orders WR 95-10 and 2009-0060 remain in place and Cal-Am must comply with them, whether through conservation, obtaining replacement water supplies, or a combination of both.

When the July 2013 settlement was briefed, the parties did not yet have the benefit of updated supply and demand figures. (*See* MCWD’s Feb. 14, 2014 Reply Brief on settlement motions, pp. 2-3.) The record now shows that system demand in 2015 was 9,545 acre-feet per year (“AFY”), according to the testimony of Cal-Am’s Vice President for Operations, Richard Svindland. (Ex. CA-41, pp. 7-8, Att. 1 thereto.) MCWD applauds this significant reduction in demand, which it appears was achieved largely through customer conservation efforts. (Ex. MCD-16, pp. 4:20-5:21.) MCWD believes that Cal-Am’s demand in 2016 will be trending even lower. (*See* Cal-Am’s monthly reporting data *available at* <http://www.watersupplyproject.org/#!system-delivery/pjew.s>.) Thus, it appears that GWR supply and expanded ASR utilization, along with aggressive conservation implemented to date, could soon allow Cal-Am to achieve full CDO compliance.

The pending amended application to the SWRCB for extension of the CDO deadline asserts that Cal-Am will require a maximum of only 8,310 AFY in total from the Carmel River after December 31, 2016, of which 3,376 AFY are legally permitted. (Ex. PCL-8, pp. 4-5, Att. 1 thereto at pp. 1-2.) Its proposed order amending the CDO would commit it to proportionally reduce its remaining illegal withdrawals as new supply of up to 4,800 AFY becomes available from expanded ASR (1,300 AFY average) and from GWR (3,500 AFY). (*Ibid*; Ex. CA-41, p. 10 and Att. 1 thereto; *see also* Ex. MCD-21, pp.

2:12-3:27.) This would result in Cal-Am drawing potentially less than 150 AFY in excess of its legal limit from the Carmel River as early as February of 2018. (RT Vol. 19, pp. 3196:8-3197:16.)

Yet the Commission itself indicated that Cal-Am's *actual* demand for Carmel River water, and thus its need for a replacement supply, is lower still. (Ex. PCL-7, p. 3.) Given a four-year average demand for Carmel River water of 7,656 AFY (*ibid*) as against the legal diversion limit of 3,376 AFY (*ibid*), the portion of water supply that must be replaced in order to achieve full CDO compliance is only 4,280 AFY (*ibid*). Applying the GWR and ASR replacement supplies to this excess Carmel River demand figure as provided by the Commission results in a potential 520 AFY *surplus* of supply ( $1,300 + 3,500 - 4,280 = 520$ ) by 2018. Cal-Am's witness confirmed on the stand that its system is currently meeting the supply and peak demand requirements of General Order 103-A and related state regulations (*i.e.*, Cal. Code Regs., tit. 22, § 64554), and that it will continue to do so when it utilizes GWR supply in place of unlawful Carmel River supply. (RT Vol. 19, pp. 3160: 21-3161:20.)

Therefore, the Commission's expeditious approval of the GWR WPA and of the Pump and Pipeline would ensure that sufficient replacement water supply is provided so that Cal-Am may finally achieve CDO compliance in less than two years. Because the need for GWR and expanded ASR is plain, the Commission's prompt approval of Cal-Am's entry into the GWR WPA, and Cal-Am's prompt construction of the Pump and Pipeline, would plainly be in the public interest. (Pub. Util. Code §§ 1001, 1002(a); *United States Steel Corp. v. Public Utilities Com.* (1987) 29 Cal.3d 603, 608-609

(Commission “may and should consider *sua sponte* every element of public interest affected by facilities which it is called upon to approve”); *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 378, 378-380.)

**B. The GWR Project Water Purchase Agreement**

MRWPCA proposes to produce and sell 3,500 AFY of GWR product water to MPWMD, pursuant to the WPA, which MPWMD would then sell to Cal-Am. (Draft WPA, Att. 1 to JE-3, pp. 3, 8-10.) The GWR product water would be injected to the Seaside Basin for later withdrawal by Cal-Am to serve its ratepayers’ needs. (*Id.* at pp. 4, 5, 7 and Exs. B and C thereto.)

The Commission must determine whether the WPA is just, reasonable and in the public interest. (Pub. Util. Code §§ 1001, 1002; *see* Nov. 17, 2015 ALJ Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2, p. 8.) While the Commission’s decision may be informed by the following nine criteria, which were set forth in the so-called “Large Settlement” of July 31, 2013 entered into by a number of parties (but not MCWD), the Commission’s decisions rests on broader principles and must address the public interest, including the present and future public convenience and necessity. (*Ibid*; Pub. Util. Code §§ 1001, 1002.) MCWD agrees that Commission approval of the GWR WPA would be in the public interest, because approval of the WPA would facilitate Cal-Am’s expeditious compliance with the CDO through implementation of a local, readily-available and renewable resource. (Ex. MCD-16, pp. 8:15-9:27.) Declining to approve Cal-Am’s entry into the WPA could lead to significant imprudent and unnecessary expenditures and an extended period of degradation of the

Carmel River from Cal-Am's illegal withdrawals contrary to the public interest. (*Id.* at p. 8:21-25; Ex. MCD-21, pp. 3:24-4:10, 4:13-19)

1. Summary of Position on GWR WPA

MCWD believes that the Commission's prompt approval of the WPA (as well as the Pump and Pipeline) would make a significant contribution to reversal of the ongoing environmental damage to the Carmel River ecosystem, and it could also bring to a close many decades of needless contention and frustration among numerous stakeholders in the Monterey County community. MCWD supports prompt approval of the WPA, as well as the Pump and Pipeline.

2. Status of the Final EIR for the GWR Project

MCWD understands that, as lead agency under the California Environmental Quality Act ("CEQA"), MRWPCA has conducted environmental review for and approved the GWR project including the Monterey Pipeline but not the Monterey Pump Station. (RT Vol. 19, p. 3237:5-16; Ex. JE-2, pp. 11:21-13:6; Ex. PCA-2, pp. 3:18-4:18.) The GWR joint witnesses testified that MPWMD is in the process of preparing and considering an addendum to its existing environmental document for the ASR project that will assess any potential additional impacts of the Monterey Pump Station. (*Id.* at pp. 12:16-13:6.) MCWD understands that the addendum will also serve as an addendum to the GWR EIR. (*Ibid.*)

MCWD previously stated its concern that addressing environmental review of the desalination proposal separately from environmental review of GWR would constitute impermissible piecemealing under CEQA, to the extent that the two projects would be

implemented together. (MCWD’s Jan. 21, 2014 Opening Brief on settlement motions, pp. 15-16, 22-23.) However, in the intervening years, the record has been developed to establish GWR’s status as an independent “stand-alone” project. For example, the settling parties requested, and the Commission agreed, to treat the GWR component as an entirely separate project. (Amended Scoping Memo and Commissioner’s Ruling of Sept. 25, 2013 granting Motion to Bifurcate at pp. 4-5.) Testimony at the 2016 evidentiary hearings bore out this approach. (RT Vol. 19, pp. 3151:27-3153:8.) Furthermore, MCWD understands that the GWR EIR addressed – and MCWD expects that the Commission’s joint EIR/EIS for the desalination proposal will address – relevant cumulative impact concerns of operating both projects concurrently. (*See, e.g.*, Ex. PCA-1, Att. B thereto at Ex. A, pp. 25-27.)

If MPWMD and MRWPCA should approve the addendum environmental document reviewing potential impacts of the Monterey Pump Station and on that basis uphold the determination to proceed with the GWR Project, MCWD understands that environmental review of potential significant impacts of the project under CEQA would then be fully completed. (Pub. Resources Code §§ 21060, 21100, 21151.) In addition, the Commission will have the benefit of understanding the status of the GWR Project prior to completing its own environmental review of Cal-Am’s desalination proposal.

### 3. Permitting Progress for the GWR Project

Because GWR is a project of MRWPCA, a public agency, with the close participation of MPWMD, another public agency, MCWD defers to those agencies as to the progress of the permitting process. However, to the extent MCWD’s participation is



required in permitting events for the GWR product water conveyance pipeline, MCWD commits to working cooperatively and expeditiously with MRWPCA. In addition, MCWD reserves its right to reply to concerns raised by other parties regarding this issue.

4. Source Waters for the GWR Project

MCWD has no concerns to state at this time concerning source waters for the GWR Project. MCWD reserves its right to reply to concerns raised by other parties regarding this issue.

5. GWR Project's Product Water Quality and Regulatory Approvals

MCWD is satisfied that the testimony of MRWPCA's witnesses has addressed thoroughly any water quality and related regulatory issues. (Ex. PCA-4, pp. 3:5-11:12; PCA-2, pp. 7:19-8:14; PCA-1, pp. 5:4-6:4.)

6. GWR Project's Schedule as Compared to Cal-Am's Desalination Project

The GWR Project is far ahead of the desalination project schedule. MRWPCA projects that, if the Commission issues a Phase 2 decision approving the GWR WPA in August of 2016, GWR can be in service by late 2017. (RT Vol. 19, pp. 3196:8-3197:16.) In addition, Cal-Am projects that, with a favorable Phase 2 decision, expanded ASR utilizing the Pump and Pipeline could also be in service by late 2017, giving Cal-Am the ability to maximize GWR and ASR withdrawals by February of 2018. (*Ibid.*) In contrast, the Commission does not expect to release its draft environmental review before December 2016, with a final decision on Phase 1 (desalination) expected sometime late in 2017 or 2018. Cal-Am has indicated that at least a two-year window will be required for

construction and operation – assuming that there are no legal challenges to any aspect of the project, such as MCWD’s opposition to the location, manner and volume of pumping from source water wells. (See Cal-Am’s most recent project schedule *available at* <http://www.watersupplyproject.org/#!/schedule/dw09n>.) Therefore, it is highly unlikely that the desalination project could begin service sooner than 2020, and the timeframe has the potential to be much lengthier depending upon environmental, technical and legal challenges that may arise.

Moreover, bringing GWR and expanded ASR promptly into full service will give Cal-Am and the Commission an opportunity to assess whether or not Cal-Am’s system demand has leveled off or will continue to decline, before the Commission and the parties undertake further lengthy and expensive proceedings related to desalination. Over the next two years, superior intake technologies and/or locations for brackish source water could be tested and proven, or entirely alternative approaches may arise that could close any remaining gap in Cal-Am’s water supply sources. For these reasons, the Commission should promptly approve the WPA as well as the Pump and Pipeline, in the public interest. (Pub. Util. Code §§ 1001, 1002(a); *United States Steel Corp. v. Public Utilities Com.* (1987) 29 Cal.3d 603, 608-609 (Commission should consider all aspects of public interest when called upon to approve facilities); *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 378, 378-380.)

#### 7. Status of GWR Project’s Engineering

As with “Permitting Progress,” above, MCWD defers to MRWPCA and MPWMD as to engineering matters, except to the extent MCWD’s participation is required in

relation to the GWR product water conveyance pipeline. MCWD commits to working cooperatively and expeditiously with MRWPCA on that pipeline. In addition, MCWD reserves its right to reply to concerns raised by other parties regarding this issue.

8. GWR Project's Funding Plan

Similar to “Permitting Progress” and “Status of GWR Project's Engineering,” above, MCWD defers to MRWPCA and MPWMD as to funding matters, except to say that MCWD understands that Commission approval of the WPA is essential to fund the implementation and operation of the GWR Project. In addition, MCWD reserves its right to reply to concerns raised by other parties regarding this issue. Nonetheless, MCWD urges the Commission's prompt approval of the GWR WPA.

9. Reasonableness of the Terms of the WPA

MCWD is not a party to the GWR WPA, and therefore declines to opine upon the reasonableness of the terms of the document at this time. MCWD reserves its right to reply to concerns raised by other parties regarding this issue.

10. Reasonableness of GWR Project's Revenue Requirement

MCWD is not a Cal-Am ratepayer, and therefore defers to other parties as to revenue requirement matters, while reserving its right to reply to concerns raised by other parties regarding this issue.

C. Cal-Am Facilities for GWR/ASR

First, the clear point must be made that, like the GWR advanced treatment plant, the pipeline that will be required for conveyance of GWR potable water from MRWPCA's treatment plant to MPWMD's wells for injection into the Seaside Basin and

eventual extraction by Cal-Am will not be built or owned by Cal-Am. (RT Vol. 19, pp. 3149:3-3150:11; Ex. JE-2, p. 28:8-17.) The conveyance pipeline for GWR water will be jointly built and owned by MRWPCA and MCWD. (Ex. JE-2, p. 28:8-17.) The conveyance pipeline would include capacity for eventual use by MCWD, if it should in the future develop its own treated water program in cooperation with MRWPCA. (*Ibid*; *see id.* at Att. 1, pp. 2, 6, 13-14.) The GWR conveyance pipeline would not be paid for by Cal-Am nor would the cost be recovered in Cal-Am's rates, except in the limited sense that MRWPCA's costs will be met through revenue under its proposed WPA with Cal-Am and MPWMD. (RT Vol. 19, p. 3150:1-11.)

With this clarification, MCWD supports Commission approval of the Pump and Pipeline. Had the Pump and Pipeline been in service sooner, Cal-Am could potentially have captured additional excess winter flow from the Carmel River for ASR, further reducing its illegal withdrawals. (*See* RT vol. 15, pp. 2501:15-2502:15 (102 and 700 AFY captured in 2015 and 2016 for ASR); Ex. CA-41, p. 10 and Att. 1 thereto (1,300 AFY avg. ASR, with Pump and Pipeline).) Cal-Am and the proponents of the GWR Project have presented testimony that the Pump and Pipeline are required in order for Cal-Am to bridge a "Hydraulic Trough" that prevents efficient transfer of water supply between the northern and southern areas of its service territory. (RT Vol. 19, pp. 3201:3-3204:13, 3207:3-11; JE-2, pp. 15:26-16:8; JE-4; *see also* JE-5, 6, 7, 8.) As many of the parties suggested in moving for an early Phase 2 decision in this proceeding (Apr. 18, 2016 Joint Motion, p. 4), the Pump and Pipeline appear to be necessary, even without Cal-Am's proposed desalination project, for maximum utilization of GWR and ASR

supplies. (Exs. JE-4; JE-2, pp. 10:8-11:2; RT Vol. 19, pp. 3148:18-3149:1, 3160:6-20; *see also* JE-5, 6, 7, 8.)

Testimony confirms that GWR will operate as a stand-alone project, regardless of the pending desalination proposal. (RT Vol. 19, pp. 3151:27-3153:8; *see also* Apr. 18, 2016 Joint Motion, p. 4.) As necessary facilities within Cal-Am’s existing service territory, the Pump and Pipeline will immediately be used, independent of any potential future desalination supply, in conjunction with the volume of replacement supply generated by GWR and expanded ASR. (*Ibid.*) Therefore they may be approved outside the CPCN provisions of Public Utilities Code section 1001. (*See* Apr. 18, 2016 Joint Motion, p. 4 at fn. 4, *citing* Pub. Util. Code § 1001 (“This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations . . . .”))

1. Monterey Pipeline

The Monterey Pipeline would presumably cure a critical gap in Cal-Am’s existing infrastructure. (RT Vol. 19, p. 3207:3-11 (the hydraulic trough “is a physical phenomenon that results from an absence of infrastructure sufficient to manage the desired flow in light of existing hydraulic grade lines”).) In order to maximize the value of constructing the Monterey Pipeline for purposes of making GWR and ASR water supply available to the full system, it would appear that construction of the Monterey Pump Station is also necessary. (RT Vol. 19, pp. 3148:18-3149:1, 3160:6-20, 3201:3-3204:13, 3207:3-11; JE-2, pp. 10:8-11:2; 15:26-16:8; JE-4; *see also* JE-5, 6, 7, 8.)

## 2. Monterey Pump Station

As noted above, the Monterey Pump Station is an integral portion of the infrastructure required to provide maximum utilization of GWR and ASR water supplies throughout the full system. (*Ibid.*) Without the Pump Station, the existing hydraulic grade lines (“HGLs”) in the system would appear to prevent efficient delivery of sufficient water supply to all of Cal-Am’s ratepayers. (RT Vol. 19, pp. 3201:3-3204:24, *see* Exs. JE-4, 5, 6, 7, 8.) Without the Pump and Pipeline, lack of high-capacity line together with an existing pressure-reducing valve (“PRV”) south of the Seaside Basin extraction point seem to prevent even, efficient delivery throughout Cal-Am’s Monterey Peninsula system, apparently resulting in the “Hydraulic Trough” phenomenon. (*Ibid.*; RT Vol. 19, p. 3207:3-11.) Installation of the Monterey Pump Station would appear to provide the hydraulic power necessary to fully utilize the Monterey Pipeline and to overcome intervening HGLs between the northern and southern sections of the system. (*Id.* at pp. 3201:3-3204:24, 3207:3-11.)

## 3. Financing/Ratemaking

MCWD takes no position at this time on appropriate financing or ratemaking arrangements for the Pump and Pipeline. MCWD merely notes that Cal-Am appears to have a number of options available for seeking the Commission’s approval of its construction, financing and potential ratemaking arrangements for the Pump and Pipeline. (RT, vol. 19, pp. 3298:5-3299:5.) MCWD reserves its right to reply to concerns raised by other parties regarding this issue.

#### IV. ADMISSIBILITY OF EXHIBIT CA-47

Commission Rule of Practice and Procedure 12.6 reads, in full:

No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

If a settlement is not adopted by the Commission, the terms of the proposed settlement is also inadmissible unless their admission is agreed to by all parties joining in the proposal.

Exhibit CA-47, offered by Cal-Am against the witness of the Office of Ratepayer Advocates (“ORA”), appears to be a settlement agreement not adopted by the Commission. (RT Vol. 19, pp. 3219:23-3221:28.) MCWD also notes that, although Exhibit CA-47 does not appear to be offered to impeach a specific statement upon cross-examination by ORA’s witness, Ms. Rose, Cal-Am seems to have offered the exhibit as it would offer an impeachment exhibit, without notice the prior day to ORA’s counsel. (RT Vol. 19, pp. 3219:6-3221:18; 3259:16-20; *see* May 18, 2016 email Ruling, *citing* Feb. 23, 2013 ALJ Ruling.) ORA’s counsel objected to admission of CA-47. (RT Vol. 19, p. 3253:7-21.) Thus, neither Exhibit CA-47 nor its terms appear to be strictly admissible under the Commission’s Rules, since the signing parties do not all consent. (Rule 12.6.)

However, the Commission may find the exhibit – or a portion thereof, section 1.3 – to constitute relevant evidence that would aid its inquiry into disputed facts, if admitted. MCWD further notes that ORA failed to object to the exhibit until Cal-Am had finished its cross-examination on the exhibit and MCWD had begun its own cross-examination on

the exhibit. (RT Vol. 19, pp. 3252:25-3253:21.) For these reasons, MCWD believes that the Commission could choose to admit CA-47 in this instance, without precedent as to future application of Rule 12.6 in other proceedings or contexts.

If ORA should move to strike any portion of MCWD's examination of Ms. Rose, MCWD would note, in fairness, that it should be entitled to explore matters addressed by Cal-Am counsel's examination of Ms. Rose prior to ORA's objection to Exhibit CA-47. Moreover, MCWD's examination concerning the contested exhibit was brief, covering approximately two pages of the transcript. (RT Vol. 19, pp. 3259:23-3261:27.) MCWD's examination concerning the exhibit tended to bolster Ms. Rose's testimony, which would eliminate the concern under Rule 12.6 of settlement matters being offered *against* an objecting party. (RT Vol. 19, pp. 3261:15-3262:8.) Finally, only a short portion of MCWD's examination actually discussed a specific term of the settlement (*id.* at pp. 3260:18-3261:27), and it only did so in relation to definition of a term ("CAW-only Facilities") that is defined elsewhere in multiple documents on the record in A.04-09-019, as well as referenced in the testimony of Ms. Rose herself here. (*E.g.*, D.10-12-016, pp. 37, 130, 132-135, 162; Application, pp. 8, 18-19; Ex. ORA-18, Att. 2.)

Therefore, whether the Commission admits Exhibit CA-47 or not, in whole or in part, and whether it strikes any portion of Cal-Am's cross-examination or not, none of MCWD's cross-examination of Ms. Rose should be stricken from the record. MCWD's examination does not run afoul of the purpose of Rule 12.6 because (1) MCWD did not introduce the offending exhibit against Ms. Rose; (2) MCWD did not use the offending exhibit to impeach Ms. Rose; (3) little of MCWD's examination addressed any specific



term of the offending exhibit; and (4) none of MCWD's examination revealed any term of the exhibit that had not already been disclosed here and in other proceedings.

MCWD's cross-examination of Ms. Rose on Exhibit CA-47 provides important, relevant information concerning the Pump and the Pipeline, which information distinguishes them from other facilities for which Cal-Am sought approval in A.04-09-019.

MCWD acknowledges that under a strict construction of Rule 12.6 ORA has a basis for objecting to Cal-Am's introduction of Exhibit CA-47. However, MCWD believes that under the specific circumstances of the cross-examination of Ms. Rose here, including the prior public release of the substance of CA-47 that was at issue in cross-examination by Cal-Am and by MCWD, the Commission would be justified in admitting the exhibit for the limited purpose of examining Ms. Rose concerning her direct testimony regarding the differences between the Pump and Pipeline for which Cal-Am is seeking approval here and the larger range of facilities described in section 1.3 of Exhibit CA-47. Therefore, MCWD suggests the Commission overrule ORA's objection and admit Exhibit CA-47, or at least section 1.3 of CA-47, for that limited purpose. But whether or not the Commission determines to admit Exhibit CA-47 into evidence, the Commission should not strike any portion of MCWD's cross-examination of Ms. Rose, for all of the reasons set forth above.

## **V. CONCLUSION**

The Commission should approve the GWR WPA, as well as the Pump and Pipeline as necessary and in the public interest.

The Commission should admit Exhibit CA-47, or at least the relevant portion of that exhibit, section 1.3, and the Commission should decline to strike any portion of MCWD's examination of Ms. Rose, if ORA so moves to strike.

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Respectfully submitted,

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